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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification and Clarification of the National Customs Automation Program Test

Regarding Periodic Monthly Statements

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces changes to the U.S. Customs and Border Protection's (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly statements (PMS) to reflect that CBP will identify PMS as paid upon the completion of the funds transfer when payment is made via Automated Clearinghouse (ACH). The trade community will experience no delays, interruptions, or process changes associated with the modifications.

Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previous notices regarding the test remain in effect. For ease of reference, CBP is reproducing the entire test, with the changes, in this document.

DATES: The changes made by this notice are effective September 7, 2019.

ADDRESSES: Comments concerning this test program may be submitted via email to Kara Welty at collectionscapabilityowners@cbp.dhs.gov with a subject line identifier reading, "Periodic Monthly Statements."

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Kara Welty, Debt Management Branch, Revenue Division, Office of Finance,

collectionscapabilityowners@cbp.dhs.gov, or (866) 530-4172. For technical questions related to transmissions using the Automated Broker Interface (ABI), contact your assigned client representative. Interested parties without an assigned client representative should direct their questions via email to the Client Representative Branch at *gmb.clientrepoutreach@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on National Customs Automation Program (NCAP) Test Concerning PMS

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE) as the CBP-authorized electronic data interchange (EDI) system. ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components.

On February 4, 2004, CBP published a notice in the *Federal Register* that announced a plan to conduct an NCAP test concerning PMS (hereinafter, referred to as the “PMS test”), which allows an importer or an importer’s designated broker to deposit estimated duties, taxes, and fees on a monthly basis. *See* 69 FR 5362 (February 4, 2004). CBP modified and clarified the PMS test in thirteen (13) subsequent *Federal Register* notices published on: September 8, 2004 (69 FR 54302); February 1, 2005 (70 FR 5199); August 8, 2005 (70 FR 45736); September 22, 2005 (70 FR 55623); January 20, 2006 (71 FR 3315); June 2, 2006 (71 FR 32114); October 17, 2008 (73 FR 61891); December 12, 2016 (81 FR 89482); January 9, 2017 (82 FR 2385); January 17, 2017 (82 FR 4900); June 8, 2017 (82 FR 26699); June 30, 2017 (82 FR 29910); and November 1, 2017 (82 FR 50656).

As part of the PMS test, CBP issues a Preliminary PMS for entries to NCAP test participants on a monthly basis. NCAP test participants must then deposit payment for the estimated duties, taxes, and fees attributable to the entries, with CBP, via Automated Clearinghouse (ACH). There are two (2) ACH payment processes—the ACH debit process and the ACH credit process. In the sections below, this document contains a description of the current state of the PMS test as it relates to the ACH debit and the ACH credit payment processes, as well as the modifications and clarifications to the PMS test made by this document. For ease of reference, this document also republishes the PMS test in its entirety, with updates to reflect the modifications and clarifications made in the past, as well as by this document.

II. ACH Debit Process

A. Background on Payment of PMS via ACH Debit Process

An ACH debit participant initiates the payment process by transmitting one ACH debit authorization per Periodic Daily Statement to CBP through ABI. If the ACH debit authorization is error-free, CBP accepts the ACH debit authorization and provides the ACH debit participant with a message confirming CBP's acceptance of the ACH debit authorization. The ACH debit participant is required to ensure that the money amount, which will be identified on the Preliminary PMS, is—in fact—available in the ACH debit participant's bank account on the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, unless the importer or the importer's designated broker elects an earlier date. On that day, CBP transmits the debit authorizations compiled in the Preliminary PMS from the Periodic Daily Statements to the designated financial institution, and CBP then identifies the Preliminary PMS as paid.

CBP subsequently generates the Final PMS on the night that CBP transmits the debit authorizations to the designated financial institution, and then transmits the Final PMS to the importer or the importer's designated broker. The Final PMS serves as evidence of the payment of the Preliminary PMS through an ACH transaction; but, the funds transfer is usually not completed until two (2) business days after the transmission of the debit authorizations to the designated financial institution.

B. PMS Test Modification and Clarification Related to ACH Debit Process

This document announces that, in order to more accurately reflect the status of the funds transfer, CBP will no longer identify an ACH debit participant's Preliminary PMS as paid

immediately upon the transmission of the ACH debit authorizations to the designated financial institution by CBP (which occurs on the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, unless the importer or the importer's designated broker selects an earlier date). The Preliminary PMS will still be issued; but, instead, CBP will issue the Final PMS and identify it as paid upon receiving confirmation from the Department of the Treasury (Treasury) that the funds are available and transferred to CBP (which marks the completion of the funds transfer).

The modifications announced in this document do not affect the timeliness of the payment, which remains based upon the date of CBP's acceptance of the ACH debit authorizations for the entries. Once CBP receives confirmation from Treasury that the funds are available and transferred to CBP, then CBP will treat the date of CBP's acceptance of the ACH debit authorizations as the effective payment date for purposes of determining the timeliness of the payments for the entries. The date of CBP's acceptance of the ACH debit authorizations also remains the date for the calculation of interest and/or liquidated damages, if applicable; the calculation is unaffected by the modifications announced in this document. It is important to note that this modification only applies to importers who participate in the test program. For all other importers participating in statement processing via ABI, the current regulation, 19 CFR 24.25(c)(4), continues to govern when CBP identifies a statement as paid.

III. ACH Credit Process

A. Background on Payment of PMS via ACH Credit Process

The ACH credit process permits participants to electronically transmit payment for PMS, through the ACH credit participant's financial institution, directly to the CBP account

maintained by Treasury. The ACH credit participant is required to ensure that CBP receives the ACH credit payment no later than the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, unless the importer or the importer's designated broker elects an earlier date. If the 15th day of that month falls on a weekend or holiday, the ACH credit participant is required to ensure that CBP receives the ACH credit payment by the business day directly preceding such weekend or holiday. Currently, CBP identifies a Preliminary PMS as paid upon the acceptance of the ACH credit payment by CBP, which equates to the collection and settlement date. CBP generates the Final PMS on the night that CBP accepts the ACH credit payment, and then transmits the Final PMS to the importer or the importer's designated broker. The Final PMS serves as evidence of the payment of the Preliminary PMS through an ACH transaction.

B. Test Modification and Clarification Related to ACH Credit Process

In order to promote consistency with the modifications of the PMS test in relation to ACH debit payments, this document also modifies the PMS test to reflect that CBP will identify the Final PMS, as opposed to Preliminary PMS, as paid for the ACH credit process. As explained above for the ACH debit process, these changes do not affect either the timeliness of the payment or the date for the calculation of interest and/or liquidated damages, if applicable, for the ACH credit process. It is important to note that this modification only applies to importers who participate in the test program. For all other importers participating in statement processing via ABI, the current regulation, 19 CFR 24.25(c)(4), continues to govern when CBP identifies a statement as paid.

IV. Republication of Periodic Monthly Statement (PMS) Test

A. Overview of Modifications and Clarifications of the Test

This section provides a description of the process for entries scheduled for monthly payment, as of this date, including the modifications and clarifications made by this notice. Several modifications and clarifications of the PMS test have been announced after the PMS test's most recent republication in a *Federal Register* notice on January 20, 2006. *See* 71 FR 3315 (January 20, 2006). Accordingly, this republication of the PMS test reflects several substantive modifications and clarifications of the PMS test that were not reflected in the PMS test's previous republication in the January 20, 2006 *Federal Register* notice.

First, in order to reflect the modifications and clarifications made by this notice, this document addresses the ACH payment processes in three (3) separate paragraphs—paragraph f pertains exclusively to the ACH debit process, paragraph g pertains exclusively to the ACH credit process, and new paragraph h pertains to both ACH payment processes.

- Paragraph f establishes when ACH debit participants are required to submit the ACH debit authorizations, when CBP will transmit the ACH debit authorizations to the financial institution, and when the money amount identified on the Preliminary Periodic Monthly Statement should, in fact, be available in an ACH debit participant's bank account.
- Paragraph g provides when, for ACH credit participants, CBP must receive the ACH credit payment.
- New Paragraph h provides that, upon the completion of the funds transfer, CBP will issue the Final Periodic Monthly Statement and identify it as paid,

transmit the Final Periodic Monthly Statement to the importer or the importer's designated broker, and treat the date of CBP's acceptance as the effective payment date of the PMS for purposes of calculation of interest and/or liquidated damages, if applicable. Any references to the marking of a PMS as paid and the generation of the Final Periodic Monthly Statement (previously contained in paragraphs f and g of the republication of the PMS test that was published in the January 20, 2006 *Federal Register* notice) have been moved to paragraph h to reflect that, for both ACH debit and ACH credit participants, CBP will no longer identify a PMS as paid or issue a Final Periodic Monthly Statement prior to the completion of the funds transfer.

Second, new paragraphs i and j contain modifications of the PMS test that were announced in a *Federal Register* notice published on June 2, 2006. *See* 71 FR 32114 (June 2, 2006). Paragraph i pertains to the payment of estimated duties, taxes, and fees for single entries or incremental entries involving split shipments. Paragraph j pertains to the payment of estimated duties, taxes, and fees for single entries or incremental entries involving unassembled or disassembled entities.

B. Periodic Monthly Statement (PMS) Test

Entries scheduled for monthly payment will be processed as follows:

- a. As entries are filed with CBP, the importer or the importer's designated broker schedules them for monthly payment.

b. CBP posts all entries that are scheduled for monthly payment on the Preliminary Periodic Daily Statement.

c. The importer or the importer's designated broker processes entry summary presentation transactions for each Preliminary Periodic Daily Statement within 10 working days of the date of entry.

d. After summary information has been filed, CBP posts the scheduled entries on the Final Periodic Daily Statement.

e. Entries appearing on the Final Periodic Daily Statements and scheduled for monthly payment appear on the Preliminary Periodic Monthly Statement. CBP will generate the Preliminary Periodic Monthly Statement by the 11th calendar day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or the importer's designated broker selects an earlier date.

f. Automated Clearinghouse (ACH) debit participants are required to submit one debit authorization for each Preliminary Periodic Daily Statement at any time from the creation of the Preliminary Periodic Daily Statement until the creation of the related Preliminary Periodic Monthly Statement. If an ACH debit participant fails to submit an ACH debit authorization for a Preliminary Periodic Daily Statement within 10 working days of the date of entry, payment for the Preliminary Periodic Daily Statement is considered late; however, the ACH debit participant will still be permitted to submit the ACH debit authorization. CBP will transmit the debit authorizations compiled in the Preliminary Periodic Monthly Statement to the financial institution on the 15th working day of the month following the month in which the merchandise

is either entered or released, whichever comes first, unless the importer or the importer's designated broker selects an earlier date. ACH debit participants must ensure that the money amount identified on the Preliminary Periodic Monthly Statement is, in fact, available in their bank account by the 15th working day of that month.

g. For ACH credit participants, CBP must receive the ACH credit payment no later than the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, or if that day falls on a weekend or holiday, the business day directly preceding such weekend or holiday, unless the importer or the importer's designated broker selects an earlier date.

h. For both ACH credit and ACH debit participants, once CBP receives confirmation from Treasury that the funds are available and transferred to CBP (which marks the completion of the funds transfer), then CBP will: (1) issue the Final Periodic Monthly Statement and identify it as paid; (2) transmit the Final Periodic Monthly Statement to the importer or the importer's designated broker; and (3) treat the date of CBP's acceptance of the ACH credit or debit payment as the effective payment date of the PMS for purposes of the calculation of interest and/or liquidated damages, if applicable. CBP will generate the Final Periodic Monthly Statement on the night that payment is processed.

i. Importers choosing to file a single entry involving split shipments consistent with the provisions of 19 CFR 141.57(d)(1) or unassembled or disassembled entities consistent with the provisions of 19 CFR 141.58(d)(1) may pay estimated duties, taxes, and fees attributable to those

entries through the method set forth in the PMS test. The date of filing of that entry identifies the month in which entry is filed and establishes the obligation to pay estimated duties, taxes, and fees by the 15th working day of the month following the month in which entry is filed.

j. Importers choosing to file incremental entries involving split shipments consistent with the provisions of 19 CFR 141.57(d)(2) or unassembled or disassembled entities consistent with the provisions 19 CFR 141.58(d)(2) as a special permit for immediate delivery after the arrival of the first portion (Incremental Release) also may pay estimated duties, taxes, and fees attributable to that entry through the method set forth in the PMS test. The date that the importer obtains release of the first portion of the entity (as provided in 19 CFR 141.57(e) or 19 CFR 141.58(e)) will identify the month that the entry is filed and establishes the obligation to pay estimated duties, taxes, and fees by the 15th working day of the month following the month in which entry is filed.

Participants should note that if they voluntarily remove an entry from a Periodic Daily Statement before expiration of the 10-working-day period after release, that entry may be placed on another Periodic Daily Statement falling within the same 10-working-day period. If, however, participants remove an entry from a Periodic Daily Statement after expiration of the 10-working-day period after release, the entry may be the subject of a claim for liquidated damages for late payment.

V. Previous Notices and Suspension of Regulations

For purposes of this test, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in parts 24, 141, 142, and 143 thereof relating to entry summary filing and processing that are inconsistent with the requirements set forth in

this notice are waived for the duration of the test. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

Dated: August 29, 2019.

Brenda B. Smith,

Executive Assistant Commissioner,

Office of Trade.

[FR Doc. 2019-19147 Filed: 9/4/2019 8:45 am; Publication Date: 9/5/2019]